

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 27302 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ABDUL SATTAR HAJI NOOR MOHAMMED MEMON & 3 - Petitioner(s)
Versus
NARSINHBHAI VELJIBHAI PATEL - Respondent(s)

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Appearance :

MR JV JAPPEE for the Petitioners.
MR.KIRIT R CHAUDHARI for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 21/06/2007

ORAL JUDGMENT

The present petition has been filed against the order dated 12th October, 2006 in C.A.F.O. No.48

of 2006 passed by Presiding Officer, Fast Track Court no.1, Sabarkantha, at Himmatnagar, whereby while dismissing the Appeal, the order below exh. 6 in Regular Civil Suit no. 24 of 2006 passed by the Principal Civil Judge, Idar was confirmed and the stay is granted in favour of the respondent (original plaintiff) to the effect that the petitioners-original defendants are restrained from entering into the premises in question and the possession of the property in question is with the respondent-original plaintiff.

2. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, the order dated 13th July, 2006 below exh 6 in Regular Civil Suit no. 24 of 2006 passed by the Principal Civil Judge, Idar as well as the order dated 12th October, 2006 in C.A.F.O. No. 48 of 2006 passed by Presiding Officer, Fast Track Court no.1, Sabarkantha, at Himmatnagar are hereby quashed and set aside for the following facts and reasons.

(i) Looking to the facts of the present case, it appears that it is the contention of the original plaintiff that he is in possession of the property in question since 1st September, 1993. This contention is, prima facie, from the revenue side case, far away from the truth. Looking to the facts of the present case, it appears that in RTS case no. 9 of 2005, a conclusion has been arrive at by Mamlatdar by taking necessary evidence that possession of the

property in question is with the present petitioners (original defendants). Vide order dated 17th May, 2006, it has been held by the Mamltidar in RTS proceedings that looking to the statements of neighbourers of the property in question and panch witnesses, the possession is with the present petitioners-original defendants. Likewise, looking to the order dated 26th September, 2005 passed by the Collector, Sabarkantha, at Himmatnagar in RTS case no. 47 of 1999, while passing the order under sub-Rule (6) of Rule 106 of the Gujarat Land Revenue Rules, 1972, it has been held by the Collector, Sabarkantha that the contention raised by the original plaintiff that he is in possession of the property in question after agreement to sell is entered into was not correct. In fact, even even on that date, the possession was with the present petitioners (original defendants). Today also before this Court, it is contended by the learned counsel for the respondent-original plaintiff that he is in possession of the property in question since 1st September, 1993 i.e. agreement to sell dated 28th June, 1993. Similar was the contention before revenue authorities on more than one occasion and as stated hereinabove, on both the occasions, once by Collector, Sabarkantha and secondly by Mamlatdar, Idar, have on the basis of the evidence on record, arrived at the conclusion that the original plaintiff was never in

possession of the property in question from 1993. Statements of witnesses were recorded and they were neighbourers. The order passed by the Mamlatdar, Idar was challenged before Deputy Collector, Idar who has quashed and set aside the order passed by the Mamlatdar, Idar only on the basis of the order below exh. 6 passed by the trial court in the present matter. Looking to the order below exh. 6 passed by the trial court in Regular Civil Suit no. 24 of 2006, it appears that only because one line is written in the panchnama drawn by the Court Commissioner that some persons of the original plaintiff are working in the field in question, on this line alone, the whole exh. 6 is allowed in favour of the respondent-original plaintiff. But as stated hereinabove, and looking to other evidence on record, on more than one occasion, the revenue authorities have arrived at a conclusion that the original plaintiff was never in possession of the property in question from the year 1993. Evidence was also recorded in the form of statements of neighbourers. Looking to the facts of the present case, prima facie, the evidence recorded by the revenue authorities in revenue cases as stated hereinabove establishes the possession of the present petitioners-original defendants, as against one line of panchnama as has been relied upon by the trial court while deciding exh. 6 in Regular Civil Suit no. 24 of 2006. This aspect of the trial court has not

been properly appreciated by the trial court as well as by the lower appellate court.

3. It is submitted by the learned counsel for the petitioners that the order dated 26th September, 2005 in RTS case no. 47 of 1999 passed by the Collector, Sabarkantha is not even referred in the plaint, which establishes the possession of the present petitioners-original defendants.

4. In view of these facts and reasons, the order dated 13th July, 2006 in Regular Civil Suit no. 24 of 2006 passed by the Principal Civil Judge, Idar as well as the order dated 12th October, 2006 in C.A.F.O. No. 48 of 2006 passed by the Presiding Officer, Fast Track Court no.1, Sabarkantha, Himmatnagar are hereby quashed and set aside. Rule made absolute accordingly with no order as to costs.

(D.N.Patel, J)

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